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# In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1497

INTERNATIONAL LONGSHOREMEN'S & WAREHOUSEMEN'S UNION, LOCAL 21,
*Petitioner,*

v.

REYNOLDS METALS COMPANY,
*Respondent.*

## RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONER'S PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## ARGUMENT IN OPPOSITION

The only question litigated in this case in the courts below was whether, as claimed by the petitioner Union, the Memorandum of Understanding signed on November 25, 1966 by respondent Reynolds Metals Company, by petitioner, and by the Port of Longview,* contained a promise by Reynolds to em-

* The Memorandum is reprinted as Appendix F to petitioner's petition herein.

ploy longshoremen for unloading alumina from Company-owned vessels at a proposed Company dock, when and if this dock was built. Reynolds contended that the Memorandum did not apply to the proposed Company dock, and instead was concerned only with the manning, the shifts, and other work details for the unloading of alumina at an *existing* Port of Longview dock, where the Port, as an independent-contractor stevedore for Reynolds, employed longshoremen to unload alumina from the Company's vessels.

As stated above, the Memorandum was signed on November 25, 1966. During 1967 the Company decided to build its proposed dock, and began the construction work. In 1968, when the dock was nearing completion, the Company assigned the disputed unloading work to Local 305 of the Aluminum Workers International, the certified collective bargaining representative for most of the workers at the Company's Longview aluminum reduction plant. Later in 1968 a fire damaged the dock, so it did not become operational until a year later. The first vessel arrived at the dock in September 1969. Local 21 then claimed the unloading work for its members, relying on the Memorandum. The Company disagreed, and this suit followed.

The District Court held for petitioner, construing the Memorandum as a collective bargaining agreement in which Reynolds had granted to Local 21 and its members exclusive jurisdiction over discharging alumina from the Company's vessels at the Company's proposed dock facility. The District Court made no

findings of any underlying facts allegedly supporting its conclusion, other than a finding that unless the Memorandum gave Local 21 the disputed unloading work, the Union got "nothing of importance" in return for the concessions it granted to Reynolds. (The District Court's opinion and judgment are reprinted as Appendices D and E to petitioner's petition herein.)

In reversing, the Court of Appeals found that the case had become moot, because the Memorandum had expired while the appeal was pending. But the Court of Appeals was also of the opinion that the District Court's decision was wrong on the merits. The Court examined the text of the Memorandum and reviewed the evidence describing its negotiation and drafting, and held that the agreement was concerned solely with the unloading work at the existing Port's dock. The Court further held that the Memorandum did not contain a promise by Reynolds to employ members of Local 21 at the Company's proposed dock, that the history of the negotiations leading up to the Memorandum showed no intent to give Local 21 exclusive jurisdiction over this unloading work, and that the District Court's findings to the contrary were clearly erroneous. (The opinion of the Court of Appeals is reprinted as Appendix B to petitioner's petition.)

**1. The case was correctly decided in the court below.**

The decision of the Court of Appeals is clearly correct on the merits. The Memorandum does not ex-

pressly mention or in any way refer to the Company's proposed dock, or to the unloading work at this dock. Petitioner's contention is that a so-called T Manning provision included in the Memorandum for "self-unloader" alumina vessels was intended to imply a promise by Reynolds to employ longshoremen at the Company's proposed dock. As the Court of Appeals pointed out, however, the Union's principal witness conceded on cross-examination that, as of 1966, the T Manning provision might have been deemed appropriate and useful for application to the unloading of self-unloader vessels at the Port's dock. Therefore the inclusion of this provision in the Memorandum, by itself, does not compel the inference claimed by petitioner.

A district court's findings are "clearly erroneous" if on the entire evidence the reviewing court is left with the definite and firm conviction that a mistake has been committed. *United States* v. *United States Gypsum Company*, 333 U.S. 364, 68 S. Ct. 525, 92 L. Ed. 746 (1948). In the Ninth Circuit, a district court's findings are protected from review by Rule 52(a) only if they afford a clear understanding of the ground on which the court based its judgment. *Fluor Corp.* v. *United States ex rel Mosher Steel Co.*, 405 F.2d 823 (C.A. 9, 1969). As measured by these tests, the District Court's findings in this case were clearly erroneous.

The decision of the Court of Appeals that the case is moot was also correct.

The Memorandum was not itself an integrated and complete contract, and does not contain a statement of its intended term or expiration date. But the Memorandum was designed to be incorporated into a new four-year Working Agreement between Local 21 and the Port. This Working Agreement was executed on June 6, 1967, and the Memorandum was in fact included therein verbatim. In these circumstances the Court of Appeals correctly concluded that the Memorandum was governed by the expiration provisions of the Working Agreement, under which the Working Agreement was to expire on July 1, 1971, but was to be considered renewed from year to year thereafter

> ". . . unless either party shall have given written notice of its desire to modify or terminate this agreement at least sixty days prior to expiration date."

As the Court of Appeals pointed out, Local 21, in the correspondence quoted at pages 19-21 of petitioner's petition herein, gave Reynolds timely notice of its desire to modify the Memorandum, thus precluding its automatic renewal and requiring its termination on July 1, 1971.

Petitioner contends that the Company was nevertheless obligated by Seections 8(a)(5) and 8(d) of the National Labor Relations Act, 29 U.S.C. §§ 158 (a) 5 and 158(d), to bargain with it for a renewal of the Memorandum, when and if the District Court's judgment was reversed (Petition, p. 24 ff). This contention is without merit.

Reynolds was not an employer of petitioner's members. If Reynolds in 1966 had promised Local 21 that it would employ longshoremen, instead of the plant workers represented by Local 305 of the Aluminum Workers, for the unloading work at the Company's proposed dock, this would have been in the nature of a "prehire" or "sweetheart" contract, contrary to Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. § 158(a)(2). Cf. *International Ladies' Garment Workers Union* v. *National Labor Relations Board*, 366 U.S. 731, 81 S. Ct. 1603, 6 L. Ed. 2d 762 (1961). Reynolds was not under a statutory duty to bargain for the renewal of such a contract.

Finally, the action of the Court of Appeals in reversing the judgment of the District Court on the merits after holding that the case was moot did not prejudice petitioner. Petitioner contends that this was inconsistent with *Local No. 8-6, Chemical & Atomic Workers International Union, AFL-CIO* v. *Missouri*, 361 U.S. 363, 80 S. Ct. 391, 4 L. Ed. 2d 373 (1960). But the *Local 8-6* case did not hold that an appellate court may never rule on the merits after a holding of mootness. Cf. *Wirtz* v. *Local Unions* 410, 410A, 410B *and* 410C, 366 F.2d 438 (C.A. 2, 1966) By going beyond its finding of mootness and holding that petitioner did not have the rights it claimed under the expired Memorandum, the Court of Appeals made it clear that petitioner lost nothing, so far as this litigation is concerned, when the Memorandum expired.

**2. Issuance of the writ is not warranted under this Court's Rule 19(b).**

The Memorandum of Understanding at issue here is a unique agreement, in no way resembling conventional collective bargaining agreements. Its proper construction is of no interest to, and can have no effect on, anyone other than the parties thereto.

The importance of the Memorandum even for the parties is questionable. Even if the Memorandum were given the meaning adopted by the District Court, any attempt by petitioner under its terms to claim the unloading work now assigned to the Aluminum Workers presumably would have to be litigated before the National Labor Relations Board pursuant to 29 U.S.C. § 160(k).

This case does not involve any important questions of state or federal law, either as to the general rules for construing contracts, or specifically as to the interpretation and effect of collective bargaining agreements. What is presented instead is a decision on a fact question, that is, the meaning of the Memorandum of Understanding; and this question depends solely on the specific terms of the Memorandum and the circumstances in which it was negotiated and drafted. A ruling by this Court construing the Memorandum would have no value as a precedent in developing the law applicable to collective bargaining agreements.

For the reasons stated above, the action of the Court of Appeals in ruling on the merits after its

holding of mootness, does not warrant issuance of the writ, despite the *Local 8-6* case, because a reversal on this ground would gain nothing for petitioner.

## CONCLUSION

We respectfully contend that no grounds exist for granting certiorari, and petitioner's petition should be denied.

Respectfully submitted,

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Reynolds Metals Company